

Application No. 10/630,555
Amendment dated October 11, 2006
Reply to Office Action of July 12, 2006

Docket No.: NY-LUD 5298-US5-DIV...

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REMARKS

Applicants have added a paragraph to the specification as requested by the Examiner.

The Examiner objects to the language of claim 32, calling for a change from "active" to -- activin --.

Were the word "active" in the claim, applicants would readily make the changes requested by the Examiner; however, it is not.

Applicants have added wash conditions to claim 32. They have changed the language of claim 33.

It is pointed out that the language of the pending claims now parallels the language of the parent case which issued as U.S. Patent No. 6,982,319. It also parallels the grandparent case, U.S. Patent No. 6,331,621.

Copies of the front page and claims of these issued patents are appended hereto. They are provided to show that the language presently employed in the pending claims has been held to adequately describe claimed inventions, to be enabled, and to satisfy the utility requirement. If this were not the case, these patents would not have issued. The cases issued under the same statutes, rules and regulations, which apply at this time, and were based on precisely the same specification.

It is understood, of course, that every application is considered on its own merits; however, unless the USPTO can explain why SEQ ID NO: 1 differs in any way relating to utility or written description than do the patents cited herein, then it is believed that the Examiner is constrained to withdraw:

(1) the rejection under 35 U.S.C. § 101;

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- (2) the rejection under 35 U.S.C. § 112, first paragraph, for lack of enablement;
- (3) the rejection under 35 U.S.C. § 112, first paragraph, for lack of written description; and
- (4) the rejection under 35 U.S.C. § 112, second paragraph, for "activin-like" in the claims.

SHOULD ANY OF THESE REJECTIONS BE MAINTAINED, THE EXAMINER IS CALLED UPON TO SET UP A CONFERENCE CALL WITH THE PRIMARY AND SUPERVISORY PRIMARY EXAMINER TO DISCUSS WHY THE RULES OF BINDING PRECEDENT DO NOT APPLY HERE.

With respect to the double patenting rejection under U.S. Patent No. 6,692,925, it is pointed out that the referenced claim (claim 3), is a method claim. Applicants specifically did NOT present method claims in this case because, in the parent application, the Examiner (Robert Landsman, who has co-signed the present action!) deemed immunoassays and antibodies to constitute separate, patentably distinct inventions. Why is this no longer the case? Again, explanation is required.

A Terminal Disclaimer is presented herein, with respect to U.S. Patent No. 6,982,319.

Applicants believe their response is complete and addresses all issues.

Any continuation of the rejections referred to herein should be discussed with the undersigned. As the current positions are in contradiction of those taken in the parent case by co-signer Examiner Landsman, he should participate as well.

In view of the above, applicant believes the pending application is in condition for allowance.

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Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-0624, under Order No. NY-LUD 5298-US5-DIV from which the undersigned is authorized to draw.

Dated: October 11, 2006

Respectfully submitted,

By 

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Attachments: Front/Claim Pages of Patents
Terminal Disclaimer